88-366

FILED
JUL 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

Howard S. Levin and Sydell R. Kraft

Petitioners,

vs.

Anthony J. Parrillo and R. Lane Stebbins

Respondents .

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

HOWARD S. LEVIN
Pro Se

SYDELL R. KRAFT
Pro Se

224 E. 49th Street
New York, NY 10017
212·935·9620

QUESTIONS PRESENTED FOR REVIEW

1. Whether persons engaged in gaming activities subject to New Jersey's Casino Control Act are entitled to the protection of due process of law.

2. Whether a constitutionally protected liberty interest requires the State of New Jersey to afford due process of law before prohibiting business transactions which had been expressly permitted by administrative action over a several year period.

3. Whether a constitutionally protected property right develops from continued adherence to statutory provisions of New Jersey's Casino Control Act and repeated administrative approval of business transactions over an extended period of time.

4. Whether the Burford abstention doctrine applies to a claim for redress under 42 U.S.C. § 1983. (Burford v. Sun Oil Co. 319 U.S. 315 (1943)).

5. Whether the Pullman abstention doctrine applies to a claim for redress under 42 U.S.C. § 1983. (Railroad Commission of Texas v. Pullman Co. 312 U.S. 496 (1941)).

PARTIES

The parties to this appeal are Howard S. Levin and Sydell R. Kraft who appear pro se.

Trans Atlantic Games, Inc. and W. Cary Edwards in his official capacity as Attorney General of New Jersey were parties to the proceedings in the lower courts.

TABLE OF CONTENTS

	PAGE
Questions Presented For Review	i
Parties	ii
Table of Authorities	v
Opinions Below	1
Jurisdiction	2
Statute Involved	3
Statement of the Case	3
Reasons for Granting the Writ	9
I. The Court of Appeals was in error by affirming the District Court finding that petitioners lacked a constitutionally protected liberty interest	13
II. The Court of Appeals was in error by affirming the District Court finding that petitioners lacked a constitutionally protected property interest	18
III. The Court of Appeals was in error by affirming the application of the Burford abstention doctrine. (Burford v. Sun Oil Co. 319 U.S. 315 (1943)).	23

Table of Contents, continued

PAGE

IV. The Court of Appeals was in error by affirming the application of the Pullman abstention doctrine. (Railroad Commission of Texas v. Pullman Co. 312 U.S. 496 (1941)). 24

V. The Court of Appeals was in error by affirming the District Court dismissal of claims entitled to trial on their merits 26

Conclusion 29

APPENDIX:

A. Judgment order of the United States Court of Appeals (March 3, 1988) A-1

B. Denial of Petition for Rehearing in banc by the United States Court of Appeals (April 14, 1988) A-3

C. Oral Opinion of the United States District Court (June 12, 1987) A-5

Appendix, Continued

PAGE

D. Opinion of the United States District Court (July 27, 1987) A-28

E. Order for Summary Judgment of the United States District Court (July 27, 1987) A-50

F. 42 U.S.C. §1983 ..... A-52

G. N.J.S.A. 5:12-92 ..... A-53

TABLE OF AUTHORITIES

Cases Cited

Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 817 16

Board of Regents of State Colleges v. Roth, 408 U.S. 564, 573 (1972) 14,15, 21

Bolling v. Sharpe, 347 U.S. 497, 499-500 15

Table of Authorities, continued

PAGE

Burford v. Sun Oil Co.,
319 U.S. 315 (1943) 23

D'Iorio v. County of Delaware,
592 F.2d, 681, 686
(3d Cir. 1978) 24,25
26

Duva v. World Boxing Association,
548 F.Supp. 710 (D.N.J. 1982) ... 22

Kentucky West Virginia Gas Co. v.
Pennsylvania Public Utility
Commission,
791 F.2d 1111, 1115
(3d Cir. 1986) 23

Meyer v. Nebraska, 262 U.S. 390,
399 15

Paul v. Davis,
424 U.S. 693 (1976) 16,17

Railroad Commission of Texas v.
Pullman Co.,
312 U.S. 496 (1941) 24,25

Stanley v. Illinois, 405 U.S. 645 . 15

Table of Authorities, continued

PAGE

State ex rel. Grimes et al. vs. Board of Commissioners of City of Las Vegas et al., 53 Nev. 364, 372, 373, 1 P.2d 570, 572 (1931) 10

State vs. Rosenthal, 559 P.2d 830 11

Wisconsin v. Constantineau, 400 U.S. 433 (1971) 16

Statutes Cited

42 U.S.C. § 1983 3

N.J.S.A. 5:12-92 4,19

NO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

Howard S. Levin and Sydell R. Kraft

Petitioners,

vs.

Anthony J. Parrillo and R. Lane Stebbins

Respondents

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

OPINION BELOW

The Court of Appeals affirmed without written opinion the order of the District Court granting summary judgment in favor of the respondents. (Appendix A).

A petition for rehearing was denied on April 14, 1988 (Appendix B).

The decision of the United States District Court is unreported. The transcript of an oral opinion of the District Court is set forth at Appendix C. The written opinion of the District Court granting summary judgment dismissing claims of the petitioners is set forth at Appendix D.

JURISDICTION

The judgment of the Court of Appeals (Appendix A) was entered on March 3, 1988. A timely petition for rehearing was filed on March 16, 1988 and was denied on April 14, 1988 (Appendix B). The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

STATUTE INVOLVED

This petition involves the interpretation of the following statute: 42 U.S.C. §1983.

The statute is set forth in the appendix.

STATEMENT OF THE CASE

Trans Atlantic Games, Inc. ("TAG") is a New Jersey Corporation formerly engaged in the distribution of slot machines. Petititioners Howard S. Levin ("Levin") and Sydell R. Kraft ("Kraft") are the two principals of TAG. Levin is the president of TAG. Kraft is the secretary/ treasurer of TAG.

TAG filed an application for licensure as a casino service industry with the New Jersey Casino Control Commission ("Commission") in or about June, 1982.

The Commission, in accordance with statutory procedures, thereafter referred TAG's application to the New Jersey Division of Gaming Enforcement ("Division") for investigation and report.

Before being licensed, an applicant for licensure as a casino service industry may do business with licensed casinos or others by means of a petition to the Commission for a "transactional waiver". (N.J.S.A. 5:12-92 a(2)). In order to obtain a transactional waiver from the Commission, the petition must be supported with a demonstration of "good cause." Id. Clearly the transactional waiver as a means of doing business prior to licensure is an established policy of New Jersey.

Between 1982 and 1986 TAG submitted more than a dozen petitions for transactional waivers on its own behalf to allow TAG to furnish slot machines to Atlantic City casinos. In the same period more than a dozen additional petitions for transactional waivers were submitted by licensed Atlantic City casinos to allow TAG to furnish slot machines for casino use.

Between 1982 and 1986 the Division recommended approval of twenty-six applications for transactional waivers filed by TAG on its own behalf or filed by Atlantic City casinos on TAG's behalf. After reviewing each of the twenty-six applications the Division recommended approval of the proposed transaction to the Commission. The Division based its recommendation on good cause having been

shown by TAG and the seven licensed Atlantic City casinos which were TAG's customers. The Commission approved by unanimous vote all transactional waivers recommended by respondents.

On October 14, 1986 respondent Stebbins on behalf of respondent Parrillo sent a letter to the Honorable Walter N. Read, Chairman of the Commission objecting for the first time to the licensure of TAG.

On November 24, 1986 counsel to TAG notified respondents of substantial omissions, inaccuracies and misrepresentations in the material transmitted to the Commission by them on October 14, 1986.

TAG's application for licensure had been pending for more than four years on October 14, 1986 when respondents first objected to TAG's licensure. No hearing

had been set by the Commission for determination of TAG's fitness for licensure. Pending the scheduling of the hearing TAG continued its normal business operations and solicited orders from its casino customers. TAG and the petitioners anticipated the continued approval of transactional waivers until such a time as they were allowed the opportunity to defend themselves against the charges made by the respondents.

On January 28, 1987 Boardwalk Regency Corporation ("BRC") a licensed Atlantic City casino sought a transactional waiver from the Commission for the purchase from TAG of four blackjack machines and four slot machines. Additionally, on February 5, 1987 BRC sought a transactional waiver from the Commission for purchase from TAG of twenty-five slot machines.

On March 5, 1987 respondents Parrillo and Stebbins notified the Commission of the Division's opposition to the application of BRC dated January 28, 1987 for a transactional waiver. Respondents Parrillo and Stebbins in a separate response dated March 5, 1987 stated opposition to the application for a transactional waiver dated February 5, 1987. The opposition of the respondents was despite the fact that TAG's qualifications for licensure as a gaming related casino service industry were not yet even scheduled to be heard by the Commission.

Under date of March 20, 1987, TAG and the petitioners requested the opportunity to review certain documents in order to support the requested transactional waivers. Respondent Stebbins in a letter dated March 31, 1987 denied the document re-

quest and refused any discovery.

During the period that rights of petitioners to discovery were in dispute the Commission administratively dismissed the transactional waivers sought by BRC to purchase blackjack and slot machines from TAG. TAG abandoned its slot machine business at substantial loss after respondents' objections caused BRC and others to refuse to do business with TAG.

REASONS FOR GRANTING THE WRIT

This appeal centers on denial of due process of law. Respondents have asserted that the petitioners are not entitled to due process and cannot be heard to complain. The District Court agreed. The District Court found no protectable liberty or property interests entitling petitioners to due process of law.

The association of gaming with organized crime and with other antisocial behavior has often led to an aversion on the part of courts toward gaming-related matters. Perhaps this state of affairs is best reflected by a 1931 Nevada case (State ex rel. Grimes et al. vs. Board of Commissioners of City of Las Vegas et al., 53 Nev. 364, 372, 373, 1 P.2d 570, 572 (1931)). In 1931 the Nevada court wrote:

> We think the distinction drawn between a business of the latter character (liquor) and useful trades, occupations, or businesses is substantial and necessary for the proper exercise of the police power of the state. Gaming as a calling or business is in the same class as the selling of intoxicating liquors in respect to deleterious tendency. The state may regulate or suppress it without interfering with any of those inherent rights of citizenship which it is the object of government to protect and secure.

This ancient finding was reaffirmed by the Supreme Court of Nevada in 1977 when considering the licensing of "Lefty" Ro-

senthal. (State vs. Rosenthal, 559 P.2d 830). Mr. Rosenthal's background included conviction for conspiracy to bribe an amateur athlete, testimony before a United States Senate subcomittee that he attempted a bribe to influence the outcome of a college football game, sworn statements by police officers that Mr. Rosenthal corrupted public officials in return for protection and action by the Florida Racing Commission to bar him from racetracks in Florida. Not surprisingly Mr. Rosenthal remained unlicensed and his attempts at judicial reversal were marked with failure.

Gaming is now a "useful trade". Gaming has become an important segment of the national economy. Estimates of its gross revenues for 1987* are as follows:

*Gaming and Wagering Business Vol. 9 No. 5 May 15, 1988 pages 9, 10, 12 and 13.

State lottery gross revenue	$12,435,000,000
Thoroughbred handle	8,194,000,000
Nevada casino gross revenue	3,668,000,000
Off-track betting and sports books gross revenues	3,482,000,000
Greyhound handle	3,203,000,000
Atlantic City casino gross revenue	2,822,000,000
Harness handle	2,576,000,000
Jai-alai handle	707,000,000
	$37,087,000,000

Gaming activities regulated by the states produced more than 37 billion dollars in gross revenues. Ancillary revenues for food, lodging, transportation and entertainment no doubt exceed this figure. The fair regulation of businesses generating these significant revenues is a matter of importance deserving consideration by this Court.

It is in the national interest that persons engaged in gaming activities be afforded the same constitutional protection as all other citizens.

I. THE COURT OF APPEALS WAS IN ERROR BY AFFIRMING THE DISTRICT COURT FINDING THAT PETITIONERS LACKED A CONSTITUTIONALLY PROTECTED LIBERTY INTEREST.

Over a four year period petitioners engaged in the sale of slot machines to Atlantic City casinos. These sales were consumated in 26 separate transactions. Each transaction was specifically authorized by the Commission after a favorable recommendation by the respondents.

Suddenly the recommendations of respondents to further transactions changed from favorable to unfavorable. No hearing was held or even scheduled. Discovery into the basis of the unfavorable recommendation was denied to

petitioners. The chilling effect of official disapproval resulted in the inability of petitioners to continue their business. Petitioners assert that the pattern of tranactions specifically permitted created a liberty interest. The State could deny further transactions only through due process of law.

In Board of Regents of State Colleges v. Roth, 408 U.S. 564, 573 (1972) this Court speaks broadly of liberty. It considers liberty a broad and majestic term - among the great constitutional concepts left to gather meaning from experience.

> "While this Court has not attempted to define with exactness the liberty ... guaranteed [by the Fourteenth Amendment], the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home

> and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized ... as essential to the orderly pursuit of happiness by free men." Meyer v. Nebraska, 262 U. S. 390, 399. In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed. See, e.g., Bolling v. Sharpe, 347 U. S. 497, 499-500; Stanley v. Illinois, 405 U. S. 645.
>
> Id 572

In the Roth case this Court commented upon "good name, reputation, honor, or integrity". Id 573. In the case brought by the petitioners these elements of freedom have indeed been stigmatized. The respondents wrote to the Chairman of the Commission on March 5, 1987 in separate letters the following statement:

> ...the Division believes that approval of the instant transaction (the sale of slot machines to BRC) would unavoidably tend to erode the public trust and confidence in the credibility and integrity of the regulatory process and of casino operations.

The petitioners were discredited by the respondents without notice, without a hearing and without the opportunity for discovery.

In Paul v. Davis, 424 U.S. 693 (1976), this Court set down the "stigma" standard for deciding whether a state has infringed on an individual's liberty. Mere reputation alone does not create a protectable interest; however, when the state not only stigmatizes the individual but acts to interfere with his future business, a constitutional right does become involved. Id. Reviewing its prior decision in Wisconsin v. Constantineau, 400 U.S. 433 (1971) this Court stated:

> '[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.' Anti-Fascist Committee v. McGrath, 341 U.S. 123, 168 (Frankfurter, J., concurring).

> "Where a person's good name, reputation, honor, or integrity is at stake <u>because of what the government is doing to him</u>, notice and an opportunity to be heard are essential." <u>Id</u>., at 437 (emphasis supplied).
>
> 424 U.S. at 708

The Court in commenting on the above quotation stated:

> We think that the italicized language in the last sentence quoted, "because of what the government is doing to him," referred to the fact that the governmental action taken in that case deprived the individual of a right previously held under state law - the right to purchase or obtain liquor in common with the rest of the citizenry. "Posting," therefore, significantly altered her status as a matter of state law, and it was that alteration of legal status which, combined with the injury resulting from the defamation, justified the invocation of procedural safeguards.
>
> 424 U.S. at 708 - 709

The holding of this Court in <u>Paul v. Davis</u> applies directly to the case at bar. Petitioners' status was altered by respondents abrupt change from approval to

disapproval. The injury resulting from the change in status was the inability of the petitioners to do further business with their customers. A mark of Cain had been indelibly placed on the foreheads of the petitioners.

The liberty interests of the petitioners entitle them to the protection of due process of law. The scorn of state disapproval was visited upon the petitioners without the hearing to which they were entitled.

II. THE COURT OF APPEALS WAS IN ERROR BY AFFIRMING THE DISTRICT COURT FINDING THAT PETITIONERS LACKED A CONSTITUTIONALLY PROTECTED PROPERTY INTEREST

TAG filed for a gaming related casino service industry license in 1982 at which time the petitioners provided full background information. The Division commenced an investigation and over a four year

period cooperated with TAG and the petitioners in their sale of slot machines to Atlantic City casinos. This cooperation was manifest by recommending approval for a series of transactional waivers filed either by TAG or by casinos with whom TAG intended to do business. The basis in the law for transactional waivers is established by N.J.S.A. 5:12-92(a) and obviously enacted to allow persons similarly situated to TAG to do business with New Jersey casinos pending a hearing on their licensing application. Over a four year period TAG sought and obtained transactional waivers. The Division recommended these transactional waivers and the Commission routinely granted the waivers by unanimous vote.

The District Court held that neither TAG nor the petitioners had a property inter-

est in a request for a transactional waiver filed by TAG's principle customer BRC. The court reasoned that TAG was not a party to the transactional waiver and hence could not have a protectable property interest. Petitioners contend that the property interest arises from a pattern of transactional waivers beneficial to petitioners which took place over a four year period with the support and cooperation of the Division.

Petitioners held and were entitled to hold a reasonable expectation that they could continue to furnish slot machines to Atlantic City casinos through compliance with procedures established by the Division pending a licensure decision by the Commission. Petitioners' compliance with those procedures as well as the approval obtained by TAG for more than two

dozen transactional waivers provided petitioners with a protected property interest.

Property rights can clearly be created by existing rules or understandings, Board of Regents v. Roth, 408 U.S. 564 (1972). The Court defined a property interest as follows:

> To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.
>
> Id. at 577

Procedures established by state law such as the transactional waiver in the case

at bar amount to "entitlements" protected by due process.

The same district that dismissed petitioners' claims has ruled broadly on the existence of protected property interests. In Duva v. World Boxing Association 548 F.Supp. 710 (D.N.J. 1982) the District Court found a protectable property interest was created by procedures established by an association governing contention for boxing championships.

Petitioners do not argue that they had an unconditional right to the approval of a transactional waiver or that the Division was bound to mute any objections it had to petitioners doing business. What petitioners do argue is that the transactional waiver procedure and the use made of it by petitioners over a four year period entitled them to a reasonable

expectation of continuance and the right to due process of law if future transactional waivers are to be denied.

III. THE COURT OF APPEALS WAS IN ERROR BY AFFIRMING THE APPLICATION OF THE BURFORD ABSTENTION DOCTRINE. (BURFORD V. SUN OIL CO. 319 U.S. 315 (1943)).

The District Court found the criteria for invoking the doctrine of abstention under Burford v. Sun Oil Co. 319 U.S. 315 (1943) to be clearly present.

The District Court cited Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Commission. 791 F.2d 1111, 1115 (3d Cir. 1986) which held the Burford abstention to be appropriate in two situations:

> (1) "where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar," and (2) where "the exercise of federal review of the question in a

> case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern."
>
> Appendix D, page A-25.

The claims of the petitioners that two state officials deprived them of constitutionally protected rights is in no way disruptive of state regulation. Petitioners seek to call to account the actions of the respondents and to obtain redress if the allegations of malice and bad faith can be proven by a preponderance of the evidence.

IV. THE COURT OF APPEALS WAS IN ERROR BY AFFIRMIMING THE APPLICATION OF THE PULLMAN ABSTENTION DOCTRINE. (RAILROAD COMMISSION OF TEXAS V. PULLMAN CO. 312 U.S. 496 (1941)).

The District Court buttresses its position of abstention by reference to D'Iorio v. County of Delaware, 592, F.2d, 681, 686 (3d Cir. 1978).

The District Court found all the elements of D'Iorio to be present and that abstention under the doctrine Pullman is mandated.

Thus the District Court considered there to be:

1. ... uncertain issues of state law underlying the federal constitutional claims ...

2. ... state law issues ... amenable to an interpretation by the state courts that would obivate the need for or substantially narrow the scope of the adjudication of the constitutional claims.

3. (possibility that) an erroneous decision of state law by the federal court would be disruptive of important state policies.

Appendix D, page A-28.

To hold, as the District Court did, that the Pullman abstention applies, is to hold that respondents are not accountable for their deprivation of petitioners' constitutional rights. There are no un-

certain issues of state law underlying constitutional claims brought in the federal court. Petitioners contend they were entitled to due process of law which was not afforded them.

State law issues are not before this Court. The assertion of individual rights cannot be considered disruptive of important state policies. The District Court is wrong in applying D'Iorio to the case at bar.

The issue petitioners seek to pursue on its merits is simply whether individuals acting under color of state law abused their positions and deprived petitioners of fundamental rights.

V. THE COURT OF APPEALS WAS IN ERROR BY AFFIRMING THE DISTRICT COURT DISMISSAL OF CLAIMS ENTITLED TO TRIAL ON THEIR MERITS

Petitioners contend the existence of con-

stitutionally protected liberty and property interests. If either of these protected interests exists petitioners are entitled to due process of law. The District Court found no such entitlement and dismissed the claims of the petitioners.

Petitioners submit that due process was clearly denied. Respondents sent their objection to further business transactions by the petitioners to the Commission and to BRC. Petitioners were not informed of respondents intent to do so. Respondents did not give petitioners any opportunity to contest the charges against them or argue against the objections. Petitioners were condemned but they were never heard.

Respondents denied discovery to petitioners who sought to clear their name. Be-

cause of the protracted delay the Commission administratively dismissed the BRC application for transactional waiver. The petitioners were irreparably injured and forced to abandon their business.

The respondents issued a recommendation to the Commission and to TAG's principle customer BRC which destroyed petitioners' ability to conduct business within New Jersey. TAG's Atlantic City customers including BRC subsequently refused to seek appproval for transactional waivers as they have done in the past to purchase slot machines from TAG.

Petitioners assert that respondents' actions were malicious and in bad faith. Petitioners seek a trial on the merits of their claims.

CONCLUSION

The Court should review this case because of the public importance of fairness to individuals and investors of regulation of gaming activities by state officials. Gaming activities in Atlantic City and Nevada and the revenue produced by state lotteries and pari-mutuel betting have created employment and investment opportunities on a large scale. It is not in the public interest for gaming regulation to be an enclave of constitutional deprivation.

Respectfully submitted,

Dated:
July 11, 1988

HOWARD S. LEVIN
Pro Se

SYDELL R. KRAFT
Pro Se

(APPENDIX FOLLOWS)

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 87-5591

TRANS ATLANTIC GAMES, INC.

HOWARD S. LEVIN and SYDELL R. KRAFT

Appellants

v.

W. CARY EDWARDS, in his official capacity as Attorney General of the State of New Jersey, ANTHONY J. PARRILLO, in his individual capacity, and R. LANE STEBBINS, in his individual capacity

---

Appeal from the United States District Court for the District of New Jersey

D.C. Civil Action No. 87-2144

(Honorable Dickinson R. Debevoise)

Submitted Under Third Circuit Rule 12 (6)

February 25, 1988

Before: BECKER, HUTCHINSON and SCIRICA,
Circuit Judge

JUDGMENT ORDER

After consideration of all contentions raised by appellants, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby AFFIRMED.

Costs taxed against appellants.

BY THE COURT,

Illegible
Circuit Judge

Attest:

s/ Sally Mrvos

Sally Mrvos, Clerk MAR - 3 1988

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 87-5591

TRANS ATLANTIC GAMES, INC.

HOWARD S. LEVIN and SYDELL R. KRAFT

Appellants

v.

W. CARY EDWARDS, in his official capacity as Attorney General of the State of New Jersey, ANTHONY J. PARRILLO, in his individual capacity, and R. LANE STEBBINS, in his individual capacity

---

(D.C. Civ. No. 87-2144)

SUR PETITION FOR REHEARING

Present: GIBBONS, Chief Judge, SEITZ, WEIS, HIGGINBOTHAM, SLOVITER, BECKER,

STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA and COWEN, Circuit Judges.

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court in banc, is denied.

BY THE COURT,

Illegible
Circuit Judge

Dated: APR 14 1988

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

Civil 87-2144(DRD)

- - - - - - - - - - - - - - - - - - X

TRANS ATLANTIC GAMES, INC.,

et al.,

Plaintiffs,

v.

W. CARY EDWARDS, etc.

et al.,

Defendants.

- - - - - - - - - - - - - - - - - - X

TRANSCRIPT OF PROCEEDINGS

June 12, 1987

Newark, New Jersey

B E F O R E:

HON. DICKINSON R. DEBEVOISE,

United States District Judge.

A P P E A R A N C E S:

RAVIN, SARASHON, COOK, BAUMGARTEN, FISCH & BAIME,

By: GEORGE R. HIRSCH,

Attorney for Plaintiffs.

W. CARY EDWARDS, Attorney General

By: BENJAMIN CLARKE,

R. LANE STEBBINS,

Assistant Attorneys General.

Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above-entitled proceedings.

s/ Larry Hennefeld

Larry Hennefeld, Official Court Reporter

THE ORAL OPINION OF THE COURT WHICH FOLLOWS AT A-7 THROUGH A-27 APPEARS ON PAGES 40-50 OF THE TRANSCRIPT

THE COURT: Let me rule on the application. The plaintiffs in this action are Trans Atlantic Games, Inc., which I will refer to as TAG, Howard S. Levin and Sydell R. Kraft. TAG is in the business of selling and servicing slot machines. Levin and Kraft are principals of TAG.

The defendants are W. Cary Edwards, named in his official capacity as Attorney General of the State of New Jersey, Anthony J. Parrillo, named individually and who is Director of the New Jersey Division of Gaming Enforcement, and R. Lane Stebbins, who is named individually as a Deputy Attorney General of the State of New Jersey.

The New Jersey Legislature has enacted the Casino Control Act, N.J.S.A. 5:12-1, et seq., which establishes a Casino Control Commission as the administrative agency charged with regulating the gaming industry in New Jersey. The statute also established within the Department of Law and Public Safety the Division of Gaming Enforcement as the primary enforcement agency under the Act.

The Commission has the responsibility to hear and decide all license, registration, certificate and permit applications and the Division of Gaming Enforcement has the responsibility to investigate all licensure applications to enforce the Act and to prosecute before the Commission all proceedings for violations of the Act.

In June of 1982 TAG applied for licensure as a casino service industry, that is, an industry or agency which could do business with licensee casinos who have been authorized to conduct business under the Act. After the application for TAG's licensure was made the Division of Gaming Enforcement commenced to investigate its qualifications for licensure.

During the pendency of the application and while the Division's investigation was proceeding, various casino licensees petitioned the Commission for permission to transact business with TAG, in accordance with the provisions of N.J.S.A. 5:12-92(a). On numerous occasions the petitions were granted and the casino licensees were authorized to engage in particular transactions with TAG.

By letter dated October 14, 1986 the Division of Gaming Enforcement transmitted to the Commission its report and recommendation with respect to TAG's licensure application. The factual information contained in the report was drawn from the sources through which the Division investigated TAG. It included financial information supplied by the Securities and Exchange Commission, tax filings and information submitted by TAG and by its principals, Mr. Levin and Miss Kraft.

It was the ultimate conclusion of the Division that TAG appeared "unable to demonstrate by clear and convincing evidence its financial stability, integrity and responsibility," as required by N.J.S.A. 5:12-89(b)(1).

By letter dated November 24, 1986 counsel for TAG contested certain of the factual information contained in the Division's letter of October 14, 1986. The Division responded to this letter by advising TAG that the factual disputes were properly the subject of a licensing proceeding before the Commission.

By letter dated May 20, 1987 the Commission advised TAG that in view of the Division of Gaming Enforcement's report of October 14, 1986 there was a substantial possibility that TAG's licensure application would be denied and further advised TAG that it had 15 days in which to request a hearing contesting the matter before the Commission. TAG was further advised that if it did not request a hearing within 15 days its licensure application might be denied by the Commission.